



**EB-2012-0033**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an application by Enersource  
Hydro Mississauga Inc. for an order approving just and  
reasonable rates and other charges for electricity  
distribution to be effective January 1, 2013 and January 1,  
2014.

**PROCEDURAL ORDER No. 3**  
**July 27, 2012**

Enersource Hydro Mississauga Inc. ("Enersource") filed an application with the Ontario Energy Board, received on April 27, 2012 which was updated on May 17, 2012, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the rates that Enersource charges for electricity distribution, to be effective January 1, 2013 and January 1, 2014. The Board has assigned the application File Number EB-2012-0033. The Board issued a Notice of Application and Hearing dated May 18, 2012.

On July 23, 2012 Enersource filed its responses to the interrogatories of the intervenors and Board staff.

The Board notes that Enersource claimed confidentiality in four of its interrogatory responses. These are:

- SEC IR No. 3 under Issue: General;
- SEC IR No. 5 under Issue: General;
- SEC IR No. 27 under Issue: 4.1; and
- AMPCO IR No.13 under Issue: 2.3.

With respect to SEC IR No. 3, as an interim measure the Board will allow any external counsel or external consultant for the intervenors that wish to review the confidential document ("the Investor Presentation") filed in response to SEC IR No. 3 to do so after

signing a copy of the Board's Declaration and Undertaking with respect to confidential documents, and filing it with the Board and serving it on Enersource. Enersource has indicated its support for this approach.

With respect to SEC IRs No.5 and No. 27, the Board notes that in the interrogatory responses Enersource states that it will not provide the information because, with respect to SEC IR No. 5 it is a commercially sensitive and confidential document and, with respect to SEC IR No. 27 it is confidential for commercially competitive reasons. Enersource did not file a copy of either of these documents in confidence with the Board.

SEC IR No. 5 is the Shareholders Agreement between the City of Mississauga and BPC Energy Corporation with an effective date of June 1, 2012 ("the Shareholder Agreement"). SEC IR No. 27 is a third party contract ("the Third Party Contract").

The Board reminds Enersource that a claim of confidentiality on its own is not a reason to refuse to produce a document. The Board's *Practice Direction on Confidential Filings* (the "Practice Direction") sets out a process to be followed when this type of claim is raised during a proceeding. Enersource has failed to follow the Board's Practice Direction in this regard. Rule 5.1.4. requires that a claim for confidentiality must include "...a confidential, un-redacted version of the document containing all the information for which confidentiality is requested."

Accordingly the Board directs Enersource to file a hard copy of the unredacted Shareholder Agreement and the Third Party Contract as set out in the Board's Practice Direction. Enersource must also file a redacted version of each document, including the Investor Presentation, in accordance with the Practice Direction.

As an interim measure, the Board will allow any external counsel or external consultant for intervenors that wish to review the confidential documents that will be filed in response to SEC IR No.5 and No. 27 to do so after signing a copy of the Board's Declaration and Undertaking with respect to confidential documents, and filing it with the Board and serving it on Enersource. The Board expects Enersource to have hard copies of the confidential documents available at the Technical Conference on Monday, July 30, 2012. The Board's Declaration and Undertaking may also be executed at that time.

With respect to AMPCO IR No.13, the matter of confidentiality has been handled by way of redaction whereby customer and corporate names in the appended correspondence have been redacted. The Board has no concern with this treatment and sees no need for additional information at this point.

As set out in the Practice Direction, it is the Board's policy that all evidence should be on the public record unless reasons warrant otherwise. This reflects the Board's view that proceedings should be open, transparent and accessible. The Practice Direction seeks to balance these objectives with the need to protect information properly designated as confidential.

Intervenors and Board staff who object to Enersource's requests for confidential treatment of any of the interrogatory responses shall file their submissions by August 3, 2012. Enersource shall file any reply submission by August 7, 2012. If the Board ultimately decides that the document(s) should not be afforded confidential treatment, they will be placed on the public record unless, within a period of five business days, and in accordance with section 5.1.12 of the Practice Direction, Enersource requests that the information be withdrawn.

### Technical Conference

On July 25, 2012 SEC requested that the Board amend the schedule for the upcoming Technical Conference. Enersource responded to the request and noted that it would be prepared to consent to a one day Technical Conference on July 31, 2012 and that it would be prepared to sit as late as necessary to complete the conference.

The Board has considered the request and has determined that the Technical Conference will proceed as scheduled in accordance with Procedural Order No.1. The Technical Conference is to commence on July 30, 2012 and continue, if necessary, on July 31, 2012. The Board asks that all parties, with the assistance of Board staff, accommodate each others' schedules as much as possible to ensure that the time set aside for the Technical Conference is used as efficiently as possible.

The Board considers it necessary to make provision for the following matters related to this proceeding. Please be aware that this procedural order may be amended, and further procedural orders may be issued from time to time.

**THE BOARD ORDERS THAT:**

1. Enersource shall file a copy of the unredacted Shareholder Agreement as requested in SEC IR No. 5 and the Third Party Contract as requested in SEC IR No. 27 with the Board and in accordance with the *Practice Direction on Confidential Filings* by 9:30 Monday, **July 30, 2012**. Enersource shall also file redacted versions of these documents and the Investor Presentation identified in SEC IR No. 3 by 9:30 Monday, **July 30, 2012**.
2. Enersource shall provide a copy of each unredacted document identified in 1 to each external counsel or external consultant that has executed the Board's Declaration and Undertaking. Enersource shall bring copies of the relevant documents to the Technical Conference on Monday, **July 30, 2012**. The Board's Declaration and Undertaking may be executed then.
3. Intervenors and Board staff who object to Enersource's claim for confidential treatment of the material so identified in the responses to SEC IR No. 3, SEC IR No. 5 and SEC IR No. 27 shall file their submission with the Board and deliver it to all parties on or before **August 3, 2012**.
4. Enersource shall file its response, if any, to the submissions of Board staff and the intervenors with the Board and deliver it to all parties by **August 7, 2012**.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

All filings to the Board must quote file number EB-2012-0033, be made through the Board's web portal at [www.errr.ontarioenergyboard.ca](http://www.errr.ontarioenergyboard.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is not available, parties may email their documents to the [BoardSec@ontarioenergyboard.ca](mailto:BoardSec@ontarioenergyboard.ca). Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board's web portal an e-mail is not required.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Richard Battista at [richard.battista@ontarioenergyboard.ca](mailto:richard.battista@ontarioenergyboard.ca) and Board Counsel, Maureen Helt at [maureen.helt@ontarioenergyboard.ca](mailto:maureen.helt@ontarioenergyboard.ca).

**ADDRESS**

Ontario Energy Board  
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Attention: Board Secretary

E-mail: [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto, July 27, 2012

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary